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12 Attorneys for Petitioner

13 UNITED STATES DISTRICT COURT

14 SOUTHERN DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA, ) Civil Case No. **'11CV0141 IEG BLM**  
16 Petitioner, )  
17 v. ) **PETITION TO ENFORCE INTERNAL  
18 CHRISTOPHER GEHRISCH, ) REVENUE SERVICE SUMMONS**  
19 Respondent. )  
20 \_\_\_\_\_ Date: April 4, 2011  
21 \_\_\_\_\_ Time: 10:30 a.m.  
22 \_\_\_\_\_ Crtrm: 1  
23 \_\_\_\_\_ The Honorable Irma E. Gonzalez  
24 \_\_\_\_\_

25 Petitioner, the United States of America, by its counsel, Laura E. Duffy, United States Attorney,  
26 and Raven M. Norris, Assistant United States Attorney, petitions the Court for an order to enforce the  
27 Internal Revenue Service ("IRS") summons described below and, in support thereof, alleges as follows:

28 1. This proceeding is brought at the request of the Chief Counsel, IRS, a delegate of the  
29 Secretary of the Treasury, and at the direction of the Attorney General of the United States.

30 2. Jurisdiction over these proceedings is conferred upon this Court by 26 U.S.C. §§ 7402(b)  
31 and 7604(a), and 28 U.S.C. § 1345.

32 3. Venue is proper in the Southern District of California because Christopher Gehrisch  
33 ("Respondent") is found within this district.

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1       4.       At all times relevant, Mark L. Lucia, who served the summons to Respondent, was a  
 2 Revenue Agent with the IRS, employed in the Small Business/Self-Employed Division of the IRS in  
 3 San Marcos, California, and was authorized to take testimony and receive documents requested in the  
 4 IRS summons pursuant to the authority contained in 26 U.S.C. § 7602 and 26 C.F.R. § 301.7602-1. See  
 5 Declaration of Revenue Agent Lucia at ¶ 1 (“Lucia Decl.”).

6       5.       Respondent can be found at 1260 Distribution Way, Vista, California 92081, which is  
 7 his business address and is within the geographical jurisdiction of this Court.

8       6.       On July 30, 2010, Revenue Agent Lucia issued an IRS Summons, IRS Form 2039  
 9 (“Summons”) directing Respondent to appear before him on August 13, 2010 in order to give testimony  
 10 and produce for examination documents and records specified in the Summons. Lucia Decl. at ¶¶ 3, 5.  
 11 The Summons relates to an investigation of the income tax liability of Proteus Dimensional  
 12 Technologies (“Proteus”) for the 2008 tax year and was issued to Respondent as Chief Executive Officer  
 13 of Proteus. Lucia Decl. at ¶¶ 2-3. A copy of the Summons is attached to Lucia Decl. as Exhibit A.

14       7.       On July 30, 2010, Revenue Agent Lucia attempted to serve a copy of the Summons by  
 15 personally handing the Summons, containing the attestation required by 26 U.S.C. § 7603, to  
 16 Respondent at the Proteus office. Lucia Decl. at ¶ 4. Respondent declined service by refusing the  
 17 Summons and closing the office door. Id. Agent Lucia left the copy of the Summons taped to the office  
 18 door. Id. A copy of the Certificate of Service is attached to the Lucia Declaration as Exhibit B.

19       8.       On August 12, 2010, Respondent, along with Matthew Gehrisch and two unidentified  
 20 individuals, appeared in response to a separate IRS summons issued to Matthew Gehrisch. Id. at ¶ 6.  
 21 Matthew Gehrisch had two boxes in his possession but did not produce the boxes to Agent Lucia. Id.  
 22 Matthew Gehrisch demanded that Agent Lucia sign a document stating that he had complied with the  
 23 summons and demanded that Agent Lucia identify the criminal acts committed by Proteus. Id. Agent  
 24 Lucia declined to sign the document and explained that the Summons related to a civil action. Id.  
 25 Respondent then instructed Matthew Gehrisch not to provide any testimony. Respondent also did not  
 26 provide any summonsed information at the August 12, 2010 meeting. Id.

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1       9.       On August 13, 2010, Respondent, along with Matthew Gehrisch and two unidentified  
 2 individuals, appeared in response to the Summons issued to Respondent. During the August 13, 2010  
 3 meeting, Respondent repeatedly refused to cooperate with Agent Lucia, refused to discuss the  
 4 summonsed information, and refused to produce the summonsed information. Lucia Decl. at ¶¶ 7-9.

5       10.      On August 13, 2010, in order to correct any potential service errors with the previous  
 6 Summons, Agent Lucia issued a second summons (“August 13, 2010 Summons”) to Respondent. Lucia  
 7 Decl. at ¶ 10. The August 13, 2010 Summons is identical to the previous Summons as it requested all  
 8 testimony, books, records, and papers relating to the 2008 tax liability of Proteus. Id. The August 13,  
 9 2010 Summons required Respondent to appear before Agent Lucia on August 24, 2010 at 8:30 a.m. at  
 10 One Civic Center Drive, Suite 400, San Marcos, California. Id. at ¶ 12. A copy of the August 13, 2010  
 11 Summons is attached to Lucia Decl. as Exhibit C.

12       11.      Agent Lucia served the August 13, 2010 Summons by personally handing the summons  
 13 to Respondent when he appeared on August 13, 2010. Id. at ¶ 11. Respondent attempted to refuse  
 14 service of the new summons. A copy of the Certificate of Service is attached to the Lucia Declaration  
 15 as Exhibit D.

16       12.      On August 24, 2010, Respondent appeared before Revenue Agent Lucia in response to  
 17 the August 13, 2010 Summons but refused to provide any of the books, papers, records, or other data  
 18 sought by the summons. Lucia Decl. at ¶ 13.

19       13.      On September 10, 2010, Agent Lucia received a letter from Respondent dated September  
 20 7, 2010. Lucia Decl. at ¶ 14, Exhibit E. The letter demanded that Agent Lucia provide the lawful name  
 21 of each individual brought into the August 13, 2010 meeting by the IRS and complete verification forms  
 22 for each individual present at the meeting. Id. Respondent did not provide any summonsed information  
 23 in the letter.

24       14.      At Revenue Agent Lucia’s request, attorney Jeffrey A. Schlei of the IRS Office of Chief  
 25 Counsel sent a letter to Respondent providing another opportunity to comply with the summons and  
 26 directing him to appear before Revenue Agent Lucia on October 15, 2010, at 9:00 a.m. at One Civic  
 27 Center, Suite 400, in San Marcos, California. Lucia Decl. at ¶ 15.

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1       15. Respondent did not appear on October 13, 2010 and did not provide any of the  
 2 summonsed information. Lucia Decl. at ¶ 16. To date, Respondent has not provided the IRS with the  
 3 documents requested by the August 13, 2010 Summons. Id. at ¶ 17.

4       16. All administrative steps required by the Internal Revenue Code for the issuance of the  
 5 summons have been taken. Id. at ¶ 19.

6       17. In order to obtain judicial enforcement of an IRS summons, the United States bears the  
 7 initial burden of showing “that the investigation will be conducted pursuant to a legitimate purpose, that  
 8 the inquiry may be relevant to the purpose, that the information sought is not already within the  
 9 Commissioner’s possession, and that the administrative steps required by the Code have been followed  
 10 . . . ” United States v. Powell, 379 U.S. 48, 57-58 (1964); accord, United States v. Dynavac, 6 F.3d 1407  
 11 (9th Cir. 1993). The burden on the government is a “slight one” and may be satisfied by presenting the  
 12 declaration by the investigating agent. Dynavac, 6 F.3d at 1414 (citations omitted). Once a *prima facie*  
 13 case has been made, “a heavy burden falls on the taxpayer” to show an abuse of process or lack of  
 14 institutional good faith. Id. The taxpayer “must allege specific facts and evidence to support his  
 15 allegations.” Liberty Financial Services v. United States, 778 F.2d 1390, 1392 (9th Cir. 1985) (citation  
 16 omitted). The matter may be decided on the written record in a summary proceeding. See Hotz v.  
 17 United States, No. MISC-CV-F-95-32, 1996 WL 159695 at \*2 (E.D. Cal. Jan. 9, 1996). To be entitled  
 18 to an evidentiary hearing, a respondent must make some showing to support a contention of improper  
 19 purpose or lack of good faith. Fortney v. United States, 59 F.3d 117, 121 (9th Cir. 1995).

20       18. Revenue Agent Lucia is conducting an investigation to determine Proteus’s tax liability  
 21 for the 2008 tax year. Lucia Decl. at ¶ 2.

22       19. The Internal Revenue Code specifically allows the issuance of a summons for the  
 23 purpose of “determining the liability of any person for any internal revenue tax . . . or collecting any such  
 24 liability . . . ” 26 U.S.C. § 7602(a). The purpose for issuing a summons may include “inquiring into any  
 25 offense connected with the administration or enforcement of the internal revenue laws.” 26 U.S.C. §  
 26 7602(b). Therefore, Revenue Agent Lucia’s investigation is being conducted pursuant to a legitimate  
 27 purpose specifically authorized by statute.

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1       20. Further, the testimony, books, papers, records, and other data sought by the  
 2 August 13, 2010 Summons are not already in the possession of the IRS. Lucia Decl. at ¶ 18.

3       21. Respondent is in possession and control of the testimony and documents concerning the  
 4 above-described investigation.

5       22. The Internal Revenue Code permits the Secretary to summon the records of any person  
 6 “which may be relevant or material” to the investigation. 26 U.S.C. § 7602(a)(1). It is well settled that  
 7 to satisfy the relevancy requirement set forth in Powell, the United States must demonstrate that the  
 8 summonsed information may “throw light upon” the subject of the investigation. United States v. Arthur  
 9 Young & Co., 465 U.S. 805, 813-14, n. 11 (1984). This standard necessarily presents a low threshold  
 10 because of the inherent difficulties in ascertaining, prior to examination, how much use the summonsed  
 11 records will be in determining the collectibility of a person’s tax liability and whether a person has an  
 12 income tax liability for a specific period. The Supreme Court has observed that:

13       [as] the language of § 7602 clearly indicates, an IRS summons is not to be judged by the  
 14 relevance standards used in deciding whether to admit evidence in federal court. The  
 15 language “may be” reflects Congress’ express intention to allow the IRS to obtain items  
 16 of even potential relevance to an ongoing investigation, without reference to its  
 17 admissibility. The purpose of Congress is obvious: the Service can hardly be expected  
 18 to know whether such data will in fact be relevant until it is procured and scrutinized.

19       Arthur Young & Co., 465 U.S. at 814 (internal citation omitted) (emphasis in original). This low  
 20 threshold of relevance also follows from the language of the Code, which authorizes the investigation  
 21 of persons who “may be liable” for taxes. 26 U.S.C. § 7601.

22       23. Under the instant circumstances, it is clear that the summonsed material is relevant. The  
 23 purpose of Revenue Agent Lucia’s investigation is to determine Proteus’s income tax liability for the  
 24 2008 tax year. Lucia Decl. at ¶ 2. The August 13, 2010 Summons seeks, among other things, “[a]ll  
 25 information and records used in or resulting from the preparation of Federal income tax returns  
 26 consisting but not limited to work papers, notes, papers, memoranda, and correspondence maintained  
 27 by, for or under the control of Proteus Dimensional Technologies, Inc. . . .” Id. at Exhibit C. The  
 28 documents sought by this summons are relevant to the determination of Proteus’s income tax liability  
 for the 2008 tax year. Id. at ¶ 20.

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24. There is no Department of Justice referral in effect with respect to Respondent or Proteus.

2 | Id. at ¶ 21.

WHEREFORE, the United States requests that:

4       1. The Court enter an order directing Respondent, Christopher Gehrisch, to show cause, if  
5 any, why he should not comply with and obey the August 13, 2010 Summons (Lucia Decl. at Exhibit C)  
6 served on August 13, 2010, and each and every requirement thereof, by ordering the attendance,  
7 testimony, and production of the books, papers, records, and other data required and called for by the  
8 terms of the summons before Revenue Agent Lucia, or any other proper officer or employee of the IRS  
9 at such time and place as may be fixed by Revenue Agent Lucia or any other proper officer or employee  
10 of the IRS.

11 2. That the United States recover the costs and expenses incurred in maintaining this action  
12 against Respondent.

3. That the Court grant such other and further relief as may be required.

14 DATED: January 24, 2011

Respectfully Submitted,

LAURA E. DUFFY  
United States Attorney

s/ Raven M. Norris

RAVEN M. NORRIS  
Assistant United States Attorney  
Attorneys for Petitioner  
E-Mail: raven.norris@usdoj.gov

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

The United States of America

(b) County of Residence of First Listed Plaintiff San Diego  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Raven M. Norris, Assistant U.S. Attorney; Civil Division, Office of the  
U.S. Attorney, 880 Front Street, Rm 6293, San Diego, CA 92101

**DEFENDANTS**

CHRISTOPHER GEHRISCH

County of Residence of First Listed Defendant San Diego

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

**'11CV0141 IEG BLM****II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 U.S. Government Plaintiff	<input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)  
(For Diversity Cases Only)

Citizen of This State	<input type="checkbox"/> PTF 1	<input type="checkbox"/> DEF 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> PTF 4	<input type="checkbox"/> DEF 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 400 Other	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 750 Other Labor Litigation	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	
			<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN**

(Place an "X" in One Box Only)

<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court	<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened	<input type="checkbox"/> 5 Transferred from another district (specify) _____	<input type="checkbox"/> 6 Multidistrict Litigation	<input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment
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Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**26 U.S.C. §§ 7402(b) and 7604(a) and 28 U.S.C. § 1345****VI. CAUSE OF ACTION**Brief description of cause:  
**Petition to Enforce Internal Revenue Summons****VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

01/24/2011

s/Raven M. Norris

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE